

## **FAMILY – MEDICAL LEAVE**

### **SCOPE**

This policy applies to merit and non-merit employees subject to the executive authority of the governor except employees of the Indiana State Police.

### **STATEMENT OF POLICY**

It is the policy of the State of Indiana to allow eligible employees to take up to 12 work weeks of leave per fiscal year for the following qualifying events:

- the birth of a child;
- placement with an employee of a child for adoption or foster care;
- caring for a spouse, child or parent with a serious health condition; or
- the serious health condition of the employee.

### Employee Eligibility

Employees who have

- been employed in an agency under the executive authority of the governor for at least twelve (12) months (consecutive or non-consecutive); and
  - who have worked at least 1,250 hours in the 12-month period immediately preceding the need for family-medical leave,
- are eligible for family-medical leave (FML).

### Requests for Family-Medical Leave

- If the need for leave is foreseeable, requests must be submitted at least thirty (30) days prior to taking the leave, or if this is not possible, as soon as practicable.
- Requests may be oral. However, they must be submitted in writing as soon as practicable.
- Leave may be taken in increments no less than fifteen (15) minutes.
- Requests must include a completed copy of the Certification of Health Care Provider or documentation of the birth, adoption, or foster care relationship for which the leave is requested.
- Leave requested for birth, adoption, or foster care placement must be taken within one (1) year of the birth or placement.

### Use of Paid Leave

- Employees shall be required to use any available sick leave if the FML is for the serious health condition of the employee, spouse, child or parent who resides in the employee's household and is dependent upon the employee for care and support.
- Agencies may not require employees to use compensatory time as a substitute for unpaid FML.
- Employees may request to use compensatory time for a FML-qualifying event. If the agency permits the use of compensatory time, it shall not be counted toward the employee's twelve-week FML entitlement.
- FML runs concurrently with the elimination and benefit periods of the State's Long/Short Term Disability Program and may run concurrently with Workers' Compensation if the absence qualifies for both programs.
- Whether FML is paid, unpaid, or a combination, the employee is entitled to only twelve (12) weeks in each fiscal year.

- Agencies may designate paid or unpaid leave as FML, whether the employee designates it as such or not, if all the following apply:
  - The agency has compelling information based on information provided by the employee that leave was taken for a FML-qualifying event; and
  - The employee is properly notified of his/her FML rights.

#### Notice to Employee

- Agencies shall at a minimum notify employees of the FML rights:
  - orally within two (2) days of their agency counting the leave as FML; and
  - in writing by the payday following the date leave is designated as FML.
- If the following payday is less than one week from the date leave is designated as FML, agencies shall provide written notice to the employee by the next payday.

#### Intermittent Use of FML

- Employees are entitled to take intermittent leave for the employee's serious health condition or due to the serious health condition of a parent, spouse or child.
- To be entitled to intermittent leave, the employee must submit certification to establish the medical necessity of the leave (eg. periodic testing and treatments). In reviewing the request, the agency shall determine whether or not an acceptable leave schedule can be arranged and may consider a temporary transfer to an alternative, comparable position.
- Agencies may require employees to provide recertification of the medical necessity for intermittent leave no more than once every thirty (30) days in conjunction with an employee's absence unless:
  - the employee requests an extension of the leave;
  - circumstances described by the previous certification have changed significantly (eg. the duration of the illness, the nature of the illness, complications); or
  - the agency receives information that casts doubt upon the continuing validity of the certification.
- Agencies may grant employees intermittent leave for the birth or placement of a child if operational needs allow such intermittent leave.

#### Medical Certification

- In addition to the certification required with a request for leave that qualifies as a serious health condition, agencies may require a second opinion from a second health care provider designated and paid for by the agency.
- If the first and second opinions conflict, agencies may require the employee to submit to a third examination at the agency's expense by a health care provider chosen jointly by the employee and the agency. In choosing the third health care provider, both the employee and the agency must be reasonable and act in good faith. The opinion of the third health care provider is final and binding.

#### Employee Benefits

- Agencies are required to continue paying the employer's portion of health insurance premiums during approved FML.
- Employees are required to continue paying the employee's portion of health insurance premiums. Information on how health insurance premiums are to be paid while on FML may be obtained from the agency's human resources office.

- Employees shall be given a thirty-day grace period from the due date of their health insurance premium. Employees who fail to pay their portion of the health insurance premium within this grace period may, with fifteen days notice from their agency, be removed from their respective health insurance plan.
- If an employee chooses not to continue health care coverage during FML, the employee will be entitled to reinstatement into the benefit plan upon return to work.
- Agencies may seek reimbursement for any health insurance premiums paid on behalf of the employee if the employee fails to return to work from FML unless the reason for the employee failing to return to work is due to the continuation or recurrence of the serious health condition or is otherwise beyond the employee's control as defined in the FMLA.
- Employees who are reinstated will not lose any service credit and FML will be treated as continuous service for the purpose of calculating any benefits which are based on length of service.

#### Reinstatement

- Employees are entitled to reinstatement to the same or similar position upon return from FML.
- If the same job is not available, the agency will determine in which similar position the employee should be placed, making sure the position has equivalent pay, benefits, and conditions of employment.
- Employees who take leave due to their own serious health condition may be required to provide certification from a health care provider that they are able to perform the essential functions of their position.

#### Recordkeeping

- The agency will maintain records of leave balances and usage.
- Medical records accompanying FML requests will be kept separate from personnel files in a confidential manner.

#### REFERENCES

29 CFR Part 825  
31 IAC 1-9  
31 IAC 2-11  
Vacation Leave Policy  
Sick Leave Policy  
Personal Leave Policy  
31 IAC 3  
Workers' Compensation Law and Rules

EFFECTIVE May 1, 2005

Supercedes Family-Medical Leave Policy dated April 1, 1996.

APPROVED



Debra F. Minott, State Personnel Director

DATE 4/14/2005